

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **VICE CHAIRMAN DUANE GRIMES**, on February 1, 2001 at 9:05 A.M., in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Duane Grimes, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Walter McNutt (R)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Anne Felstet, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 293, SB 328, HB 115 1/29/01  
Executive Action: SB 328, HB 115

HEARING ON SB 328

Sponsor: SEN. JACK WELLS, SD 14, BOZEMAN

Proponents: Pam Bucy, Assistant Attorney General

Opponents: NONE

Opening Statement by Sponsor:

SEN. JACK WELLS, SD 14, BOZEMAN, opened on SB 328 saying basically it was a transfer of authority and funding between the Justice Department and Executive Department in the Governor's Office. Extradition of prisoners was administered through the Governor's office, but the funding was handled through the Department of Justice. They believed it should all be done by one. The departments coordinated and decided to transfer the entire operation to the Governor's office.

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, provided a handout explaining the agreement and why SB 328 should be passed, **EXHIBIT** (jus26a01).

Opponents' Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

SEN. WELLS closed on SB 328. He said it was an obvious improvement of government efficiency.

HEARING ON HB 115

Sponsor: REP. JIM SHOCKLEY, HD 61, VICTOR

Proponents: NONE

Opponents: NONE

**Opening Statement by Sponsor:**

**REP. JIM SHOCKLEY, HD 61, VICTOR, opened on HB 115,** requested by the Law, Justice, and Indian Affairs Committee. He said the bill made it clear that if the crime itself involved a weapon, then the enhancement provisions for a weapons charge could not be used. He said it was based on a Supreme Court decision.

**Proponents' Testimony:**

None

**Opponents' Testimony:**

None

**Questions from Committee Members and Responses:**

**SEN. JERRY O'NEIL** asked if this same issue came up in federal enhancement sentences for guns. **REP. SHOCKLEY** replied he wasn't sure, but he understood the Federal Courts to say if an enhancement was used in a state or federal court, there had to be a separate instruction on the enhancement. In the example of a kidnaping where a firearm was used, there would have to be jury instruction that they had to find beyond a reasonable doubt that the kidnaping took place and as a separate matter, they'd have to determine that a weapon was used. He asked if that answered the question.

**SEN. O'NEIL** said no, he was thinking that the federal law had weapon enhancement and was wondering about double jeopardy.

**REP. SHOCKLEY** said he wasn't sure, but he thought the federal court decisions related to both federal and state law. He understood that the enhancement problem would be addressed in state court with an Attorney General's bill. He didn't know how the federal courts would use it.

**SEN. DUANE GRIMES** asked if this was the same section of law from last session. **REP. SHOCKLEY** said yes; it was a clarification to the bill passed.

**Closing by Sponsor:**

**REP. SHOCKLEY closed on HB 115.**

**HEARING ON SB 293****Sponsor:**

**SEN. STEVE DOHERTY, SD 24, GREAT FALLS**

**Proponents:**                    **Brenda Nordlund, Assistant Attorney General  
with Motor Vehicle Program**

**Opponents:**                   **Ian Marquand, Society of Professional  
Journalists**

**Opening Statement by Sponsor:**

**SEN. STEVE DOHERTY, SD 24, GREAT FALLS, opened on SB 293.** He said the bill was requested by the Department of Justice and the Attorney General's office. It was intended to bring Montana law into compliance with another federal law: the Driver Privacy Protection Act of 1994. That law had been in litigation in courts around the country, but passed all the tests. SB 293 governed the release of personal information from motor vehicle records. Person information included: social security number, photograph(image), and medical or disability information and was accorded greater protection than other information included on a license. The standards were derived from federal law and were based on the intended use of the requester. The bill limited the sale or re-disclosure of personal information by recipients except for permissible uses. It also established strict record keeping requirements for those who resold or redistributed personal information from motor vehicle records.

**Proponents' Testimony:**

**Brenda Nordlund, Assistant Attorney General with Motor Vehicle Program,** said the federal law took effect in 1997 and between then and May 1999 was in litigation over 10<sup>th</sup> Amendment issues. The U.S. Supreme Court gave a decision in Reno vs. Condon upholding Congress's ability to regulate disclosure of personal information from state motor vehicle records. SB 293 brought Montana law into compliance with the federal DPPA and made Montana's law more restrictive than what the federal DPPA required in one instance. She said they brought the bill because of vendors (people interested in the information that the motor vehicle division held). She said personal information was classified into two categories: 1) regular personal information: name, address, telephone number, and driver's license number. 2) highly restricted personal information included social security number, photograph (image), and medical or disability information. Under SB 293, highly restricted information would only be available from state motor vehicle records basically to the subject of the record, to the person who had obtained express consent by the subject of the records, and to federal, state, or local governmental agencies in the performance of their statutory functions. Regular personal information would be available to many users. Page 3, section 7 of the bill listed the vendors who

could request personal information excluding highly restricted. She mentioned a drafting oversight that included "other agencies" in with the list of highly restricted information. It was pointed out that it didn't conform to the Montana Individual Privacy standard in the MT Constitution. It was excluded in that section, but they need to be in section 7. An amendment had already been created to amend that oversight. She mentioned that traffic convictions were not included on a person's motor vehicle record. Therefore, if a vendor knew a person's name and enough identifying information to allow the Motor Vehicle Division to locate the record, they would be able to receive a copy of the motor vehicle record. She said it would still be available because it was a public record of a conviction. SB 293 protected personal information. It was a change in the Motor Vehicle Division practices. A history of Montana law showed a dichotomy in motor vehicle and driver's license records. Motor vehicle records had been wide open over the years. They were a mailing list source. SB 293 repealed that provision of the mailing list law. It would also repeal the provision to release the names and addresses of all those who turned 18 since the last general election to political parties. She noted the negative fiscal note. It was negative because current practice sold vehicle records under a relatively open law. They anticipated that the note, when the DPPA was implemented, would not be as high, but until the vendors on the motor vehicle side were worked with, they wouldn't know the true amount. She said the records in the past had been sold in accordance with the law that should now be changed. She mentioned the changes in the bill to the criminal code. Section 12 would now specifically include "purposeful or knowing", so that if someone misrepresented why they were requesting the information, they could be prosecuted.

#### **Opponents' Testimony:**

**Ian Marquand, Society of Professional Journalists**, provided his opposition to the bill, **EXHIBIT(jus26a02)**.

*{Tape : 1; Side : B}*

**Gregory A. Van Horssen, State Farm Insurance Companies**, did not appear before the committee, but provided written testimony in lieu of oral testimony in opposition to SB 293, **EXHIBIT(jus26a03)**.

#### **Questions from Committee Members and Responses:**

**SEN. JERRY O'NEIL** questioned if a list of registered voters, which was linked to registered drivers, would be available to the public. **SEN. DOHERTY** said driver's licenses were linked to jury

pools. He didn't think the bill regarding jury pools would interfere with SB 293.

**SEN. O'NEIL** asked if a list of the eligible jury members was available to the public. **SEN. DOHERTY** said it was public information.

**SEN. O'NEIL** clarified if the list of potential juries was open to the public, couldn't **Mr. Marquand** get that same information from that source, collect enough information on a person, then request further information from the Motor Vehicle Division.

**SEN. DOHERTY** said the list of people for jury service was public information, but he wasn't sure if that included the entire list of licensed drivers.

**SEN. O'NEIL** felt that the list of potential jurors, which included all licensed drivers was public information and it didn't stop people from obtaining the personal information.

**SEN. DOHERTY** acknowledged that it could be true.

**SEN. RIC HOLDEN** asked about the fiscal note. He wanted to know about the revenue gained and lost and its impact on the budget.

**Brenda Nordlund, Assistant Attorney General with Motor Vehicle Program**, said there was ambiguity in the note, but it dealt only with Motor Vehicle titling and registration. It did not affect the significant revenues collected from MVR's issued to insurance companies and employers. It would change the contracts between the state and the vendors who used the information for such things as recalled vehicles.

**SEN. HOLDEN** asked if the federal mandate restricted photograph usage or if it was a state provision. **Ms. Nordlund** said the federal law treated it differently and SB 293 was more restrictive.

**SEN. HOLDEN** asked where photographs were addressed in the bill. **Ms. Norland** answered on page 2, lines 9-11.

**SEN. HOLDEN** asked why it was more restrictive. **Ms. Nordlund** said releasing the photographs might not comport with the Montana Individual Privacy Act.

**SEN. DUANE GRIMES** asked about the request of the Society of Professional Journalists to be excluded from the restricted list. **Ms. Nordlund** said page 4, lines 3 and 4 of the bill permitted continued access to motor vehicle records for research activities and production of statistical reports as long as the personal information was not published, disclosed to a third party, or used to contact the subjects. She said the exemption could be

discussed with the Society to make it more acceptable and more explicit for the journalists.

**SEN. GRIMES** asked about the penalty for journalists crossing the line. **Ms. Nordlund** said the penalty in the bill talked about misrepresentation of use or identity. She said the federal law had clear penalties for information used from a motor vehicle record. It created a civil cause of action by the subject of the record, including actual and punitive damages, and attorneys fees. In the federal law, the motor vehicle division that released that information contrary to the DPPA would be subject to a civil penalty of \$5000 a day enforceable by the U.S. Attorney.

**SEN. HOLDEN** asked for specific amendments to the bill.

**Ian Marquand, Society of Professional Journalists**, said he would create something.

**SEN. GRIMES** suggested **Valencia Lane, Legislative Staffer**, could look into the issues **SEN. O'NEIL** raised regarding how the information could be released to the public.

**Closing by Sponsor:**

**SEN. DOHERTY** closed on SB 293.

**EXECUTIVE ACTION ON SB 328**

**Motion:** **SEN. GRIMES** moved that **SB 328 DO PASS**.

**Discussion:**

**SEN. DUANE GRIMES** recapped the purpose of the bill.

**Vote:** Motion carried 9-0.

**EXECUTIVE ACTION ON HB 115**

**Motion/Vote:** **SEN. GRIMES** moved that **HB 115 BE CONCURRED IN**.

**Motion carried 9-0.** **SEN. JERRY O'NEIL** would carry the bill on the Senate floor.

**ADJOURNMENT**

Adjournment: 9:57 A.M.

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SEN. DUANE GRIMES, Vice Chairman

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ANNE FELSTET, Secretary

LG/AFCT

**EXHIBIT** (jus26aad)